

**BEFORE THE BOARD OF CONTRACTORS**

**STATE OF IDAHO**

In the Matter of the Registration of:	)	
	)	Case No. CON-2007-67
MARVIN SHELEY,	)	
Registration No. RCT-18906,	)	<b>STIPULATION AND</b>
	)	<b>CONSENT ORDER</b>
Respondent.	)	
_____	)	
CONSheley\P70591ma	)	

WHEREAS, information having been received by the Idaho State Board of Contractors (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Marvin Sheley (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**A.**

1. The Board may regulate the practice of contracting in the State of Idaho in accordance with title 54, chapter 52, Idaho Code.

2. Respondent Marvin Sheley is a registrant of the Idaho State Board of Contractors and was issued Registration No. RCT-18906 on October 17, 2006, to practice contracting in the State of Idaho. Respondent's registration is subject to the provisions of title 54, chapter 52, Idaho Code.

**ALLEGATIONS**

**Investigation No. CON-P3C-2-2007-256**

3. On September 25, 2006, Respondent prepared a bid for customer MR to do a bathroom remodel for \$4,200. The contract stated that Respondent would: "replace tub/shower w/new tub/shower kit, new window, close off one of doors, new vinyl

flooring, new sink & vanity, all new ADS plumbing below, fix water softener, frame around water heater w/door, tap, top, texture, paint.” Respondent was not registered with the Board at the time of preparing the bid and submitting the bid.

4. MR paid Respondent \$2,000 as a downpayment on September 25, 2006, and paid Respondent an additional \$1,000 on October 2, 2006.

5. On October 4, 2006, numerous problems were found with Respondent’s work: the siding on the house was damaged when a new window was installed in the bathroom, the window frame was not secured to the wall studs, there was a gap with the bottom 2x4 and the edge of the window, the plumbing that had been done by Respondent consisted of a T that allowed a 4-inch pipe to the toilet and a 1½-inch drain pipe for the shower and sink to drain into (which could not handle both the sink and the shower if used at the same time), the galvanized pipe of the sink drain was 2 inches lower and had to be cut off to mate with the new drain pipe, the lath and plaster wall did not allow for adequate support or insulation (the wall behind the shower was fiberboard wall only), the shower wall was not secured to the main home support and was not secure, the pressed wood flooring was screwed down without removing the linoleum, wood around the toilet had rotted and was just covered over by Respondent, and the water softener was draining to the outside of the house. When Respondent was asked about the problems, he discontinued work on the project.

6. Respondent’s engaging in the business of or holding himself out as a contractor to MR prior to registering as a contractor with the Board constitutes a violation of Idaho Code §§ 54-5204(1) and 54-5215(2)(a).

7. Respondent’s failure to complete the work for MR or the meet construction standards constitutes dishonest or dishonorable dealings, in violation of Idaho Code § 54-5215(2)(g), and/or gross negligence or recklessness in the performance of construction, in violation of Idaho Code § 54-5215(2)(h).

**Investigation No. CON-P4A-2-2007-324**

8. On June 17, 2006, Respondent and customer JS agreed on a proposal to put a metal roof on JS's house. On June 22, 2006, JS paid Respondent \$2,000, and on June 27, 2006, JS paid Respondent an additional \$350. Respondent was not registered with the Board at the time of contracting with JS to put a metal roof on JS's house.

9. Respondent never started the job, and on October 4, 2006, JS filed a small claims case against Respondent in Owyhee County Small Claims Court Case No. CV-2006-5716-H. On November 6, 2006, a default judgment was entered against Respondent for \$2,350 plus court costs of \$70.

10. Respondent's engaging in the business of or holding himself out as a contractor to JS prior to registering as a contractor with the Board constitutes a violation of Idaho Code §§ 54-5204(1) and 54-5215(2)(a).

11. Respondent's failure to complete the work for JS or meet construction standards constitutes dishonest or dishonorable dealings, in violation of Idaho Code § 54-5215(2)(g), and/or gross negligence or recklessness in the performance of construction, in violation of Idaho Code § 54-5215(2)(h).

12. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby admits the violations and agrees to the discipline against his registration as set forth in Section C below.

**B.**

I, Marvin Sheley, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my registration to practice as a contractor in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights

accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of contracting in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this Stipulation and Consent Order I am enabling the Board to impose disciplinary action upon my registration without further process.

### C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent shall pay to the Board an administrative fine in the amount of Five Hundred and No/100 Dollars (\$500.00) within ninety (90) days of the entry of the Board's Order.

2. Respondent shall pay investigative costs and attorney fees in the amount of Three Hundred Eighty and No/100 Dollars (\$380.00) within ninety (90) days of the entry of the Board's Order.

3. Subject to Paragraphs C(3)(a) and C(3)(b) below, Registration No. RCT-18906 issued to Respondent Marvin Sheley is hereby SUSPENDED for a period of ninety (90) days. During the suspension period, Respondent shall not practice contracting in the State of Idaho. The suspension period shall commence seven (7) days from the date of entry of the Board's Order.

a. Prior to any release from suspension, Respondent must pay in full the administrative fine and investigative costs and attorney fees required above in Paragraphs C(1) and C(2). Respondent's registration shall remain suspended until Respondent has paid in full the administrative fine and investigative costs and attorney fees.

b. If Respondent pays the administrative fine and investigative costs and attorney fees described above within forty-five (45) days of the date of entry of the

Board's Order, Respondent may request to appear before the Board to seek an early release of his suspension; provided however, that any decision to grant a request by Respondent for an early release from suspension will be subject to the Board's sole discretion.

4. When Respondent's registration is reinstated after the suspension period, Respondent's Registration No. RCT-18906 shall be placed on probation for a period of two (2) years. The conditions of probation are as follows:

a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of contracting in the State of Idaho.

b. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

c. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho will not apply to the reduction of this period or excuse compliance with the terms of this Stipulation.

d. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

e. Respondent shall make all files, records, correspondence or other documents available immediately upon the demand of any member of the Board's staff or its agents.

5. At the conclusion of the 2-year probationary period, Respondent may request from the Board reinstatement of Registration No. RCT-18906 without restriction. Any request for reinstatement must be accompanied by written proof of compliance with the terms of this Stipulation, and Respondent must appear before the Board prior to

reinstatement. The Board retains discretion to grant reinstatement of Respondent's registration or to deny reinstatement and continue the period of probation.

6. All costs associated with compliance with the terms of this Stipulation and Consent Order are the sole responsibility of Respondent.

7. The violation of any of the terms of this Stipulation and Consent Order by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

**D.**

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-5215. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to

the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action.

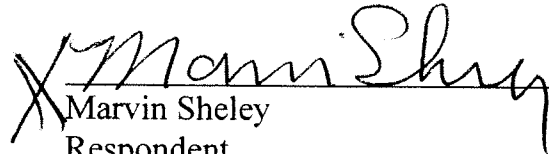
7. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it

will be of no effect.

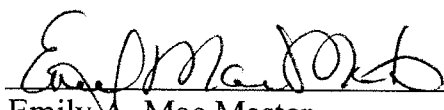
DATED this 14<sup>th</sup> day of May, 2007.

  
Marvin Sheley  
Respondent

I concur in this stipulation and order.

DATED this 15<sup>th</sup> day of May, 2007.

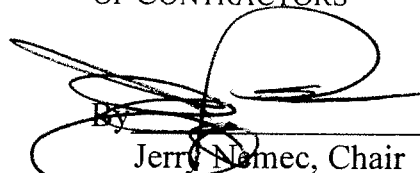
STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By   
Emily A. Mac Master  
Deputy Attorney General

### ORDER

Pursuant to Idaho Code § 54-5207, the foregoing is adopted as the decision of the Board of Contractors in this matter and shall be effective on the 14<sup>th</sup> day of June, 2007. IT IS SO ORDERED.

IDAHO STATE BOARD  
OF CONTRACTORS

  
Jerry Nemecek, Chair



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of June, 2007, I caused to be served a true and correct copy of the foregoing by the following method to:

Marvin Sheley  
15983 Allendale Road  
Wilder, ID 83676

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Emily A. Mac Master  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ Statehouse Mail



Tana Cory, Chief  
Bureau of Occupational Licenses